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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,431

11/28/2003

Fesal K. Sari

10024

1190

7590

08/22/2006

Ruben Alcoba
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EXAMINER

FOSTER, MARLEE CHRISTINE

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,431

Applicant(s)

SARI, FESAL K.

Examiner

Marlee C. Foster

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>28 November 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

In paragraph [0002], line 4, "where developed" should state, "were developed".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Landers (US 6,264,678). Landers discloses a vibrating pacifier with a circular holder, a battery operated motor with a vibrating end 24, a shield 14, and a mouthpiece. The motor is contained within a body (col. 3, lines 57-58). Figure 3 shows the nipple member to be biconcave, so to provide increased comfort to a child's mouth (col. 2, line 55) and increasing the surface contact with the child's gum line.

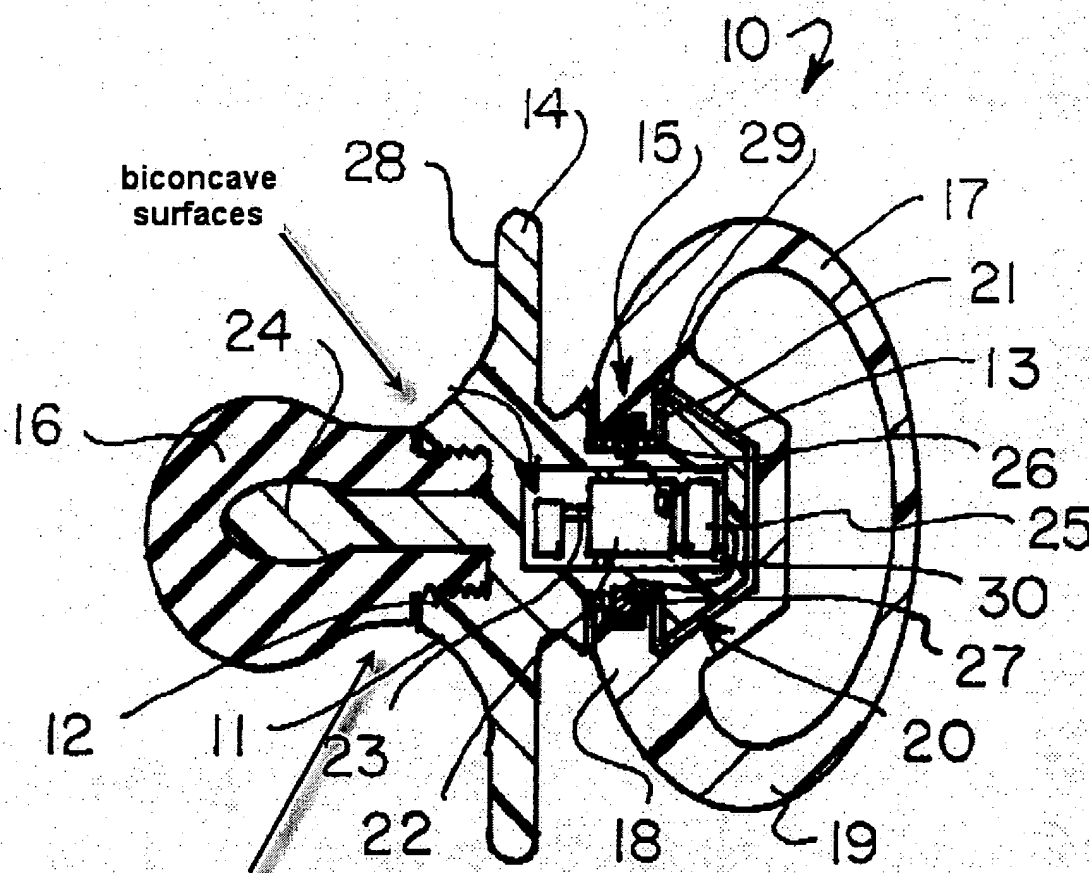


FIG. 3

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landers (US 6,264,678) in view of Sanbrook et al. (US 2005/0080456), and in further view of Falgout (US 5,551,952). Landers discloses a vibrating pacifier, but lacks the U-shaped wire in the mouthpiece, the plurality of bumps extending outward from the mouthpiece, and a motor operating at an adjustable frequency. Additionally, Landers does not specify the material composition of the device.

Sanbrook et al. (US 2005/0080456) disclose a U-shaped mouthpiece 20 with a plurality of bumps 67 to massage the gums. Sanbrook et al. disclose the device composed of a medically safe polymer (paragraph 0015). Falgout (US 5,551,952) discloses a teething ring with a mouthpiece made of plastic (14 and 16), having a plurality of bumps on the exterior (18). A sliding switch 30 controls the motor through a variable resistor, and allows the user to change the frequency of vibrations as desired (col. 3, lines 4- 9).

A U-shaped mouthpiece increases the surface contact of the device with the child's gums, and the bumps further massage the gums with the vibrations. A variable frequency acts to allow the user to adjust the vibrations to a level that is comfortable for

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a teething infant. Therefore, it would have been obvious one skilled in the art at the time of the invention to modify the device of Landers in view of Sanbrook et al. and Falgout.

7. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landers (US 6,264,678) in view of Sanbrook et al. (US 2005/0080456), and further in view of Berman et al. (US 5,649,964).

8. The Landers/ Sanbrook combination device discloses a vibrating pacifier, but fails to show a motor operable at an adjustable frequency and a motor that shuts off automatically.

9. Regarding claims 9, 12, and 15, Berman et al. teach a switch on the device coupled to a timer, where electric motor is activated for a predetermined length of time (col. 4, lines 18-22). Berman et al. additionally disclose a switch capable of activating the battery to allow selective operation of the motor (col.6, lines 21-23), which allows the user to vary the vibration frequency.

10. A device with a motor that is activated for a predetermined length of time and then powered off automatically conserves battery power. For the purpose of this device, it allows the motor to stop operating after the child is asleep. The frequency can also be modified to increase the comfort of the infant. The U-shaped mouthpiece of Sanbrook et al. conforms to the gum line for increased comfort. Therefore, it would have been obvious one skilled in the art at the time of the invention to modify the Landers/ Sanbrook combination device in view of the teachings of Berman et al. to

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increase the comfort and make the device more functional for massaging the gum line while conserving battery power.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson (US 5,334,218), Scagliotti (US 5,902,322) and Glick et al. (US 693,073) teach pacifiers of interest. Johnson teaches a similar design, with a teething member formed to conform to the shape of the gum line of an infant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlee C. Foster whose telephone number is (571) 272-5072. The examiner can normally be reached on Monday to Friday 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Monlee C. J. [Signature]

MCF 8/17/06

[Signature]
ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

8/20/06